

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MARK I. SOKOLOW, *et al.*,

Plaintiffs,

v.

THE PALESTINE LIBERATION
ORGANIZATION, *et al.*,

Defendants.

Civil Action No. 04cv397 (GBD) (RLE)

**DEFENDANTS' REPLY IN SUPPORT OF THEIR
MOTION TO COMPEL RULE 35(a) EXAMINATIONS
WITHIN THE SOUTHERN DISTRICT OF NEW YORK**

Pending before the Court is Defendants' Motion to Compel Rule 35(a) Examinations within the Southern District of New York. DE 154, 155. It is unfortunate that it took more than two months' worth of correspondence between counsel, a letter to, and a conference before, the Court, and a motion to compel before Plaintiffs ultimately conceded, as requested in Defendants' motion, that all Rule 35(a) examinations that are conducted in this matter should take place within the Southern District of New York. *See* Plaintiffs' Memorandum in Opposition to Defendants' Motion to Compel Rule 35(a) Examinations within the Southern District of New York at 1 (DE 161) ("Plaintiffs do not oppose the specific, narrow relief requested by Defendants' motion."). Thus, the parties now agree that Defendants' Motion should be granted.

Plaintiffs, however, also seek to impose conditions on the relief sought by Defendants' motion. First, they ask the Court to order Defendants to "coordinate the timing of the Rule 35 examinations with Plaintiffs' counsel so as to minimize the disruptions to the work and school schedules of [the] out-of-town and overseas Plaintiffs and their travel and lodging costs." *Id.* at

2. Second, Plaintiffs request that the Court order that any depositions taken by Defendants of the out-of-town and overseas Plaintiffs take place either at the time they are in New York for their Rule 35 examinations, or at their place of residence. *Id.*

In concept, Defendants have no problem with attempting to coordinate the depositions and Rule 35 examinations of Plaintiffs so that they take place on dates convenient to the parties and counsel. Defendants have attempted, and will continue to attempt, to do so in any event. However, ordering Defendants to schedule the depositions and examinations subject to the subjective satisfaction of Plaintiffs is likely to prove unworkable in reality, and is therefore not appropriate for a court order.

Fact discovery in this matter closes on December 21, 2012. DE 131. As is apparent from the October 14, 2011 letter pending before the Court, Plaintiffs continue to withhold information and materials responsive to discovery requests propounded by Defendants in this matter, some of which the Court ordered Plaintiffs to produce more than a month ago. *See generally* Letter from Mark J. Rochon to Hon. Ronald L. Ellis (Oct. 14, 2011). Thus, Defendants are already in the position of having to prepare for, coordinate, and conduct the depositions of up to 35 plaintiffs, and an as-yet-uncertain number of Rule 35 examinations, in a little more than a year, without knowing when Plaintiffs will produce the discovery materials necessary for Defendants to efficiently conduct those proceedings — and therefore without knowing, due to Plaintiffs' own discovery delays, whether it will be reasonably possible to coordinate the timing of those proceedings. Defendants intend to proceed with the depositions and examinations as appropriate under the circumstances and Plaintiffs should not be heard to complain if they are required to travel to New York twice (once for a Rule 35 examination and again for a deposition) if such

repeat visits are due to Plaintiffs' own failure to fulfill their discovery obligations in a timely manner.

Accordingly, Defendants respectfully request that the Court grant their motion without imposing the conditions requested by the Plaintiffs at this time.

November 4, 2011

Respectfully submitted,

/s/ Mark J. Rochon

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